IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

WRIT PETITION No.8584 of 2005.

Smt. Subhadrabai D. Gaikar & Ors. Petitioners.

Vs.

Sudhir D. Hazare. ..Respondent.

Mr. A. A. Garje, Advocate for the Petitioners.

Mr. Peter Lobo, Advocate for the Respondent.

CORAM: R.C. CHAVAN, J.
DATED: 12th January, 2007.

P.C.:-

1. By this petition, the original defendants in Special Civil Suit No.1752 of 1996 before the Civil Judge, Senior Division, Kalyan takes exception to the order passed by the learned Judge allowing the application for amendment of the plaint and joinder of the Municipal Corporation of the City of Kalyan and 23 others as party defendants.

2. The plaintiff had sought amendment of the plaint and joinder of these parties on the ground that the plaintiff came to know that Kalyan Municipal Corporation had sanctioned the original plan for construction by being

allowed to be misguided by the petitioners-defendants. The 23 occupants,who had raised construction on the disputed site are sought to be joined because the tenements were transferred to these persons during the pendency of the suit after the construction was completed.

3. Heard the learned counsel for the petitioners. The learned counsel for the petitioners submits that joinder of these persons and Kalyan Municipal Corporation was thoroughly unnecessary and would change the nature and complexion of controversy which was initially projected by the plaintiff. I do not see as to how the petitioners could object to the joinder of Kalyan Municipal Corporation as well as the 23 occupants of the structure raised on suit plot bearing Municipal House No.81, when it is not disputed that the plans were sanctioned in respect of these buildings and 23 occupants are transferees of the original defendants in respect of the structure raised on the site of municipal house No.81. It is true that the plaintiff had referred to the sanction for the plans

granted by Kalyan Municipal Corporation in the plaint as original filed and, therefore, the plaintiff had knowledge of the sanction of the plans of Kalyan Municipal Corporation. However, it does not follow that the plaintiff's acquisition of knowledge that such plan was sanctioned mischievously was also acquired when the plaint was filed. This is what plaintiff has sought to do. Since there are allegations against the officials of Kalyan Municipal Corporation the plaintiff has rightly sought to join Kalyan Municipal Corporation as party and the learned Trial Judge has rightly allowed to join Kalyan Municipal Corporation as party defendant. As regards 23 occupants, since the transferees of tenements, if the plaintiff succeeds in his fight against the petitioner, he would just get a paper decree if these 23 occupants are not joined as party defendants. Since the transfers have taken place during the pendency of suit. No fault can be found with the view taken by the learned Trial Judge and hence no case is made out to interfere in exercise of writ jurisdiction under Article 227 of the

Constitution of India. The petition is consequently dismissed.

[R.C. CHAVAN, J]